EXHIBIT 3

Redacted Version of Document Sought to be Sealed

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
- x
CHASOM BROWN; MARIA NGUYEN; WILLIAM
BYATT; JEREMY DAVIS; and CHRISTOPHER
CASTILLO, individually and on behalf
of all other similarly situated,

        Plaintiffs,
                No. 5:20-cv-03664-LHK
   -against-

GOOGLE LLC,

        Defendant.

- x

       Zoom video conference deposition of
    RORY McCLELLAND, taken pursuant to
    notice, was held remotely, commencing
    February 18, 2022, 5:30 a.m. Eastern
    Standard Time, before Leslie Fagin, a
    Stenographic Court Reporter and Notary
    Public in the State of New York.
                - - -

       MAGNA LEGAL SERVICES
   320 West 37th Street, 12th Floor
    New York, New York 10018
       (866) 624-6221

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 1
 2     A P P E A R A N C E S:
       (All Parties Present Via Zoom.)
 3
 4
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 5     Attorneys for Plaintiffs
                 44 Montgomery Street, 41st Floor
 6               San Francisco, California 94104
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       QUINN EMANUEL URQUHART & SULLIVAN
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11               CARL SPILLY, ESQUIRE
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       BY:       BENJAMIN L. BAILEY, ESQUIRE
15               ELLIOTT McGRAW, ESQUIRE
16
       ALSO PRESENT:
17
       LESLEY WEAVER, ESQUIRE
18     BLEICHMAR FONTI
            For the Calhoun Plaintiffs
19
       VANESSA WHEELER, Exhibit Tech
20        Magna Legal Services
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23
24
25
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1   R. McClelland

2   A.   I do, yes.

3   Q.   Can you elaborate more on this user

4   expectation?

5   MS. CRAWFORD: Objection,

6   foundation.

7   A.   My understanding is that users

8   expect Incognito mode or private browsing

9   modes generally to present all in session ad

10 tracking when, in reality, the tracking is

11 limited to that single Incognito session, but

12 within the session, the tracking does occur.

13   Q.   As far as you know, has Google ever

14 considered stopping session-based tracking?

15   MS. CRAWFORD: Objection.

16   A.   ████████████████████████████

17 ██

18 ██████████████████████████████████████

19 ████████████████████████████████████

20 ████████████████████████████

21   Q.   Were you involved in that proposal?

22   A.   I was, yes.

23   Q.   What happened with that proposal?

24   A.   It was a contentious proposal.

25 There were two clear groups, two different

1   R. McClelland

2   points of view, opinions. There was the view

3   ███████████████████████████████

4   █████████████████████████████████████

5   ████████████████████████████████

6   ███████████████████████████████

7   ████████████████████████████

8   ███████████████████████████████

9   █████████████████████████████████████

10   ████████████████████████████████

11   █████████████████████

12   Those two proposals were taken

13   forward through an escalation and,

14   ultimately, ████████████████████

15   ███████████████████████████████

16   █████████████████████████████████

17   █████████████████

18   Q.   Which view did you have, was it the

19   first one or the second one, about the being

20   a good citizen?

21   A.   My preference was for the first one

22   as a product manager, your role is to

23   represent the user and the user problem and

24   to argue for them.

25   That said, I respected both points

1   R. McClelland

2   of view. It wasn't a clear right or wrong,

3   just two different ways of moving forward.

4   Q.   Who made the ultimate decision to

5   ███████████████████████?

6   MS. CRAWFORD: Objection,

7   foundation.

8   You can answer.

9   A.   It went to an escalation meeting.

10   I think it was a woman called Parisa Tabriz,

11   I struggle to remember her name, but her

12   first name was Parisa. She was a director of

13   engineering at the time and her counterpart

14   from the products side, Margret Schmidt.

15   Q.   Do you remember the name of this

16   proposal, if it had one?

17   A.   No, I'm afraid. If you were to

18   give it to me, I might be able to recognize

19   it rather than recall it.

20   Q.   Please take a look at the page

21   ending in 409.

22   Do you see at the top, it says,

23   What are any risks or potential moments when

24   trust might be lost with participants while

25   in private mode?

 1   R. McClelland

 2   document.

 3   It might be easier if you use the

 4   link that allows you to control the document.

 5   A.   Okay. I have reviewed it. Thank

 6   you.

 7   Q.   Is this a document that you

 8   authored as part of your work for Google?

 9   A.   That is right, yes.

10   Q.   It says, ███████████████████████

11   ██

12   ███████████████████████████████████

13   ████████████████ .

14   Do you see that?

15   A.   I do, if we can zoom in.

16   Q.   Were you proposing a change by

17   Google to how Chrome Incognito mode

18   functioned?

19   MS. CRAWFORD: I want to note, I

20   think the zoomed in portion of the

21   document doesn't reflect what you were

22   just reading from, Rosie. It would be

23   helpful for Mr. McClelland to zoom in on

24   that specific portion.

25   A.   Thank you.

1   R. McClelland

2   Q.   This is the second paragraph where

3 it says, ███████████ ?

4   A.   Yes.   To answer your question, we

5 were proposing an ████████████████████████

6 ██

7 █████████████████████████████████

8 ██████████████████████████████████

9 ██████

10   Q.   ███████████████████████████████████

11 ████████████████

12   A.   ██████████████████████████████████

13 ████████████████████████████████████

14 ██

15 ████████████

16   Q.   The proposal we reviewed earlier

17 about signaling when a person is in Incognito

18 mode, would that also fall under ████████████

19 ████████████ ?

20   MS. CRAWFORD: Objection, misstates

21   the witness' testimony.

22   A.   It really depends upon the user.

23 Back to the very first documents around, you

24 can't solve for privacy until you know from

25 whom the user wants privacy, and who they are

1   R. McClelland

2   willing to trust to deliver that.

3   For users who trusted Google, both

4   of these proposals, this one and the

5   aforementioned one ███████████████████

6   ██.

7   To be clear, users in a different

8   group who didn't trust Google, this could

9   materially make their privacy worse, so we

10   had to be aware of the different needs of

11   different groups of users when designing

12   feature.

13   Q.   I'm trying to understand, were

14   these different proposals?

15   A.   Different proposals, yeah.

16   Q.   So for this specific proposal, what

17   changes were you proposing to Incognito mode?

18   A.   Two main changes, minimizing, it

19   gets technical, but minimizing the exposed

20   entropy of the browser. What that means, in

21   more simple terms is, when you visit a

22   website, the browser presents a series of

23   characteristics that can be used by the web

24   server to tailor the experience, for example,

25   it might say, you are using Windows or Micro

 1   R. McClelland

 2   S.   It would say which fonts you have

 3   installed and the resolution of your screen

 4   and the web server can use that information

 5   to tailor the experience to make it a more

 6   seamless experience for the user, but the

 7   server may also use that, and this is any

 8   server can use it to create a profile of you

 9   and try to uniquely identify you amongst all

10   the browsers in the world, based upon the

11   observable characteristics of your browser.

12   So the anti-fingerprinting defenses

13   would be to minimize the amount of data

14   exposed to the web server in order to make it

15   as difficult as possible for the web server

16   to uniquely identify your browser amongst all

17   the browsers that exist.

18   Q.   Can you explain how a server can

19   use information to create a profile of you?

20   MS. CRAWFORD: Objection.

21   A.   I can. When you visit a website,

22   you type www, dot, the name.com and press

23   enter, your browser sends information to that

24   -- routed to that server and included in that

25   package of data are things such as your IP

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 1                  R. McClelland
 2    address, your user agent string, as
 3    mentioned, the fonts, lots of information
 4    about the capabilities of your browser, it's
 5    a lot of data basically and, generally, the
 6    combination of all of that data together
 7    uniquely identifies a browser, not always,
 8    but often, and the server may use that
 9    information to actually identify your browser
10    and to start a profile about you.
11        Q.   Just to clarify, this information
12    we just discussed, would this be information
13    that could be included within an Incognito
14    mode session?
15        A.    Incognito mode sends exactly the
16    same data.  If it did not, then it would
17    reveal the Incognito intent to the web
18    server.  It has to present itself in an
19    identical matter to regular mode.
20        Q.   When you testified earlier that
21    this proposal would minimize the amount of
22    data exposed to the web server to make it as
23    difficult as possible for the web server
24    inventory to uniquely identify your browser
25    amongst all the browsers that exist, do you
```

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1   R. McClelland

2   recall testifying to that?

3   A.   I do, yes.

4   Q.   Would this include minimizing the

5   amount of data exposed to Google's servers?

6   A.   It would. Google is included in

7   the third party web group in this instance,

8   no special treatment for Google inferred in

9   this proposal.

10   Q.   In the first paragraph, the last

11   sentence, the reference to browser level

12   anti-fingerprinting defenses, what do you

13   understand anti-fingerprinting defenses

14   means?

15   A.   Fingerprinting, as I previously

16   described, attempting to uniquely identify a

17   browser based upon the characteristics it

18   presents to the web server.

19   Anti-fingerprinting defenses are techniques

20   that can be applied by the browser to try to

21   prevent -- to frustrate it and to make it as

22   difficult as possible to do and an example

23   would be rather than giving the actual screen

24   resolution, giving a standardized screen

25   resolution or a standard list of fonts or

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```
 1                R. McClelland
 2   spoken languages, to try to look as generic
 3   as possible.
 4        Q.   So this proposal would include a
 5   proposal to minimize any attempts by Google
 6   to uniquely identify a browser?
 7           MS. CRAWFORD:  Objection,
 8       mischaracterizes the witness' testimony,
 9       misstates the document.
10        A.   It would make it difficult for
11   Google to do that as much as any other web
12   application.  As far as I am aware, Google
13   doesn't use this technology.
14        Q.   Would this proposal provide users
15   with protection from tracking?
16           MS. CRAWFORD:  Objection, vague and
17       overbroad as to tracking.
18        A.   It would make it harder to track
19   the user where the user didn't want to be
20   tracked.
21        Q.   Would this proposal provide users
22   with protection from tracking from Google?
23        A.   I don't know.  As far as I am
24   aware, Google doesn't use fingerprinting in
25   lieu of cookies, but I'm not the expert
```

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1   R. McClelland

2   there.

3   Q.   Did Google ever implement

4   ███████████ ?

5   A.   No, it did not.

6   Q.   Can you tell me a little more about

7   the process of this proposal, who was

8   involved?

9   A.   I struggle a bit remembering this

10   one. It was one of the very early -- the

11   document you have here is a one-pager. It's

12   a very early exploration around an idea

13   rather than a more formal proposal. This is

14   a mechanism through which a product manager

15   can get early feedback around a sort of an

16   idea they have.

17   From memory, the feedback from

18   memory, I'm struggling, but, from memory, the

19   feedback I got from this document convinced

20   me this wasn't a feasible direction to really

21   take, at least not in the short term.

22   Q.   Why wasn't it feasible?

23   A.   I can't remember the details, I'm

24   afraid.

25   Q.   Was this your proposal?

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1   R. McClelland

2   A.   This was my proposal, yes.

3   Q.   Do you remember who you made this

4   proposal to?

5   A.   The document would have been shared

6   with a group, a group, I think, called Chrome

7   privacy leads or something of that nature,

8   from memory, comprising of 20 to 30

9   individuals working closely in the privacy,

10   Chrome privacy space, my co-peers basically.

11   Q.   Do you remember if this proposal

12   ever made it up to high-level Google

13   executives?

14   A.   It was certainly shared with my

15   line manager, but that is not executive

16   level. As far as I am aware, it didn't make

17   it up any higher than that.

18   MS. BAEZA: We can take this

19   exhibit down.

20   Next, I'm marking Exhibit 7.

21   (Exhibit 7, documents bearing Bates

22   stamp No. GOOG-CABR-04675770 through

23   GOOG-CABR-04675772, marked for

24   identification.)

25   Q.   Exhibit 7 is a document Google

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```
 1                  R. McClelland

 2    produced from your files with production Nos.

 3    GOOG-CABR-04675770 through the page ending in

 4    772.

 5                  Please let me know when you have

 6    that in front of you.

 7         A.    I see it, yeah.

 8         Q.    Please take a moment to review the

 9    document.

10                  MS. CRAWFORD:  While I'm waiting

11           for this document to load, is this a

12           another multipage document?

13                  MS. BAEZA:  Yes, it is.

14                  MS. CRAWFORD:  Thank you.

15         A.    Okay.  I have reviewed it.  Thank

16    you.

17         Q.    Please take a look at the page

18    ending in 771.  It's an email from Ben

19    Galbraith.  It starts with, Hi, Gang.

20                  Do you see that?

21         A.    Yes.

22         Q.    It says, Good meeting with Sundar

23    today.

24                  Do you see that?

25         A.    I do, yes.
```

 1   R. McClelland

 2   Q.   Do you understand that to be Sundar

 3   Pichai?

 4   A.   That's right, yes.

 5   Q.   If you look at the third bullet, it

 6   says, He liked the element of the plans we

 7   presented.

 8   Do you see that?

 9   A.   I do now, yeah.

10   Q.   If you jump to bullet B, it says,

11   The IP -- the 1P/3P cookie space split with

12   user opt-in controls to clear 3P state.

13   Do you see that?

14   A.   I do, yes.

15   Q.   What did you understand 1P/3P

16   cookie space split with user opt-in controls

17   to clear 3P state to mean?

18   MS. CRAWFORD: Objection.

19   A.   1P means first party and 3P, third

20   party. It's the simplest explanation to

21   start with.

22   Cookies are referred to as either

23   first party or third party. If you go to

24   ABC.com and ABC.com puts a cookies on your

25   computer, that cookie is in that context a

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```
 1                 R. McClelland
 2   first party cookie.  If you then go to
 3   FEG.com and from that website, read that same
 4   cookie, that same cookie is now a third party
 5   cookie because it is being read from a
 6   different context than the web server that
 7   wrote the cookie.
 8             So where the readings and writings
 9   are the same, that's a first party cookie.
10   Where there is a discrepancy between the two,
11   it is a third party cookie.
12             The important thing is a given
13   cookie can be sometimes first party and
14   sometimes third party, depending upon who is
15   trying to read it.
16        Q.   Sorry, go ahead.
17        A.   Beyond that, the actual proposal
18   being discussed here, I'm not familiar with
19   this.
20             I can infer and I can guess, if you
21   so wish, but I'm not actually familiar with
22   the exact details of what was being proposed
23   in this email.
24        Q.   In the later, point D, it reads,
25   Adding opt-in anti-tracking/privacy controls
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 1                    R. McClelland
 2    with the theme of ███████████████; Sundar
 3    was particularly excited about this and felt
 4    it could be a very powerful component of the
 5    narrative.
 6              What do you understand the
 7    reference to ████████████████    mean?
 8              MS. CRAWFORD:  Objection, insofar
 9         as you are asking the witness to
10         speculate.
11         A.   I am speculating.  I can't remember
12    whether this came before the ██████████
13    proposal or afterwards, but at this point in
14    time, generally, there were various
15    conversations around what an ██████████
16    ███████████ might look like, so it's basically
17    referring to something of the nature of the
18    previous document we looked at.
19         Q.   So aside from the previous
20    documents that we looked at that had two
21    different proposals, what other proposals
22    were being considered by Google that would
23    fall into the category of ████████████████?
24              MS. CRAWFORD:  Objection, assumes
25         facts, foundation.
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 1                  R. McClelland
 2        A.   I don't really know.  There were no
 3   firmed-up proposals at this stage, just
 4   ideas.
 5             The intent here, I think from
 6   memory, would have been to encourage as to
 7   further explore those ideas and to come back
 8   with more firmed-up proposals.
 9        Q.   What ideas are you referring to?
10        A.   We didn't have any that I was aware
11   of at this stage, but there was a general
12   desire to have some form of ███████
13   █████████  that the user could opt into that
14   █████████████████████████████████████.
15        Q.   Do you have any reason to doubt the
16   accuracy of Mr. Galbraith's report on this
17   meeting with Mr. Pichai, discussing
18   Incognito?
19        A.   I have no reason to --
20             MS. CRAWFORD:  I want to note for
21        the record my objection, calls for
22        speculation.
23        Q.   Mr. McClelland, I'm not sure if the
24   court reporter caught that.
25             Can you please repeat your answer?
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 1

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 3                 I N D E X

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 5

 6  RORY McCLELLAND                     PAGE

 7     By Ms. Baeza                     3, 308

 8     By Ms. Crawford                  213

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13  EXHIBIT                             PAGE

14  Exhibit 2 Documents bearing Bates   9

15     Stamp No. GOOG-CABR-05766858 and

16     GOOG-CABR-05766859

17  Exhibit 3 Documents bearing Bates   14

18     Stamp No. GOOG-BRWN-000042388

19     through GOOG-BRWN-000042418

20  Exhibit 4 Document bearing Bates    35

21     Stamp No. GOOG-CABR-05144251

22  Exhibit 5 Documents bearing Bates   62

23     Stamp No. GOOG-CABR-00141578

24     and GOOG-CABR-00141579

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 5   EXHIBIT                                    PAGE

 6   Exhibit 6 Document bearing Bates          105

 7       Stamp No. GOOG-CABR-00125537

 8   Exhibit 7 Documents bearing Bates         114

 9       Stamp No. GOOG-CABR-04675770

10       through GOOG-CABR-04675772

11   Exhibit 8 Documents bearing Bates         120

12       Stamp No. GOOG-CABR-04734899

13       through GOOG-CABR-04734902

14   Exhibit 9 Documents bearing Bates         138

15       Stamp No. GOOG-CABR-05169125

16       through GOOG-CABR-05169128

17   Exhibit 10 Documents bearing Bates        147

18       Stamp No. GOOG-BRWN-000701734

19       through GOOG-BRWN-000701748

20   Exhibit 11 Documents bearing Bates        168

21       Stamp No. GOOG-CABR-05276150

22       through GOOG-CABR-05276153

23   Exhibit 12 Documents bearing Bates        184

24       Stamp No. GOOG-CABR-04625213

25       through GOOG-CABR-04625222
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 3                   E X H I B I T

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 5   EXHIBIT                              PAGE

 6   Exhibit 13 Documents bearing Bates     189

 7        Stamp No. GOOG-CABR-00173728

 8        through GOOG-CABR-00173735

 9   Exhibit 14 Documents bearing Bates     192

10        Stamp No. GOOG-CABR-01561563

11        through GOOG-CABR-01561579

12   Exhibit 16 Documents bearing Bates     199

13        Stamp No. GOOG-CABR-00358713

14        and GOOG-CABR-00358714

15   Exhibit 17 Document bearing Bates      208

16        Stamp No. GOOG-CABR-00799341

17   Exhibit 15 Documents bearing Bates     209

18        Stamp No. GOOG-CABR-05256755

19        through GOOG-CABR-05256760

20   Exhibit 18 Documents beginning with    231

21        Bates stamp No. GOOG-CABR-05145880

22   Exhibit 19 Documents beginning with    248

23        Bates stamp No. GOOG-CABR-0502836

24   Exhibit 20 Documents beginning with    260

25        Bates stamp No. GOOG-CABR-00503128
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 5   EXHIBIT   PAGE

 6   Exhibit 21 Documents beginning with   265

 7   Bates stamp No. GOOG-BRWN-0045551

 8   Exhibit 22 Documents beginning with   268

 9   Bates stamp No. GOOG-CABR-00483672

10   Exhibit 23 Documents beginning with   275

11   Bates stamp No. GOOG-CABR-00892455

12   Exhibit 24 Documents beginning with   281

13   Bates stamp No. GOOG-CABR-05236676

14   Exhibit 25 Excerpt from 75-page   288

15   complaint

16   Exhibit 26 Documents beginning with   300

17   Bates stamp No. GOOG-BRWN-00029326

18   Exhibit 27 Excerpt from complaint   302

19   Exhibit 28 Document bearing Bates   322

20   Stamp No. GOOG-CABR-05786200

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 3               DEPOSITION SUPPORT INDEX

 4                            - - -

 5    Direction to Witness Not to Answer
      Page  Line          Page  Line    Page  Line
 6    None
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 7

      Request for Production of Documents
 8    Page  Line          Page  Line    Page  Line
      None
 9
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10

      Stipulations
11    Page  Line          Page  Line    Page  Line
      None
12                            - - -
13    Questions Marked
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14    None
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15

      To Be Filled In
16    Page  Line          Page  Line    Page  Line
      None
17                            - - -
18
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21
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1   CERTIFICATE

2

3

4   I HEREBY CERTIFY that the foregoing proceedings

5 were duly sworn by me and that the proceedings are a

6 true record.

7

8   _____

9   Leslie Fagin,
           Registered Professional Reporter

10   Dated:

11

12

13   (The foregoing certification of this transcript

14 does not apply to any reproduction of the same by any

15 means, unless under the direct control and/or

16 supervision of the certifying reporter.)

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